

**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY**

*Caption in Compliance with D.N.J. LBR 9004-1(b)*

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In re:

NEW JERSEY ORTHOPAEDIC INSTITUTE LLC,  
et al.,

Debtors.<sup>1</sup>

NEW JERSEY ORTHOPAEDIC INSTITUTE LLC  
and NORTHLANDS ORTHOPAEDIC INSTITUTE  
LLC,

Plaintiffs,

v.

ANTHONY FESTA, M.D., ANTHONY SCILLIA,  
M.D., CRAIG WRIGHT, M.D., JOHN  
CALLAGHAN, M.D., CASEY PIERCE, M.D., AND  
ACADEMY ORTHOPAEDICS LLC,

Defendants.

ANTHONY FESTA, M.D., ANTHONY SCILLIA,  
M.D., CRAIG WRIGHT, M.D., JOHN  
CALLAGHAN, M.D., CASEY PIERCE, M.D., AND  
ACADEMY ORTHOPAEDICS LLC,

Third-Party Plaintiffs.

v.

Chapter 11

Case No. 25-11370 (JKS)

(Jointly Administered)

Adv. Pro. No. 25-01036 (JKS)

<sup>1</sup> The last four digits of Debtor New Jersey Orthopaedic Institute LLC's tax identification number are 3560; the last four digits of Debtor Northlands Orthopaedic Institute LLC's tax identification number are 9828. The location of both Debtors' principal place of business and the Debtors' service address in these Chapter 11 Cases is 504 Valley Road, Suite 200, Wayne NJ 07470.

VINCENT McINERNEY, M.D.

Third-Party Defendant.

**PLAINTIFFS' ANSWER AND AFFIRMATIVE DEFENSES TO  
DEFENDANTS' COUNTERCLAIM**

Plaintiffs New Jersey Orthopaedic Institute LLC and Northlands Orthopaedic Institute LLC (collectively, the “**Plaintiffs**”), hereby respond to the *Answer to Adversary Complaint, Affirmative Defenses, Counterclaim and Third Party Complaint* [D.I. 17] (the “**Answer**”) filed by Anthony Festa, M.D., Anthony Scillia, M.D., Craig Wright, M.D., John Callaghan, M.D., Casey Peirce, M.D. and Academy Orthopaedics, LLC (collectively, the “**Defendants**”) as follows:

**JURISDICTION AND VENUE**

1. Denied as a conclusion of law.
2. Denied as a conclusion of law.
3. Denied as a conclusion of law.
4. Denied as a conclusion of law.
5. Denied as a conclusion of law.
6. Denied as a conclusion of law.
7. Denied as a statement of Defendants’ position to which no response is required.

**PARTIES**

8. Admitted.
9. Admitted.
10. Admitted.
11. Admitted.

**GENERAL ALLEGATIONS APPLICABLE TO ALL COUNTS**

12. Admitted.

13. Admitted.

14. Admitted.

15. Denied as insufficiently specific, as this allegation does not indicate when the Defendants held the alleged percentage interests.

16. Admitted.

17. Denied.

18. Admitted only that the Defendants withdrew from the practice. The remaining allegations are denied.

19. Denied.

20. Admitted.

21. Admitted.

22. Admitted.

23. Admitted.

24. Admitted.

25. Denied to the extent that these allegations attempt to characterize the arbitrator's ruling, a written document that speaks for itself.

26. Denied.

27. Admitted.

28. Admitted.

29. Admitted only that the Debtors have not directed Friar Levitt to release the \$1.75 million and have not paid the BAIT rebate. The remaining allegations are denied.

**FIRST COUNT**

**Declaratory Judgment – Friar Levitt Escrow**

- 30. This is an incorporation paragraph to which no response is required.
- 31. Denied as a conclusion of law.
- 32. Admitted.
- 33. Denied as a conclusion of law. Further denied as the Debtors retained a clear right to the portion of these funds not attributable to end of year 2021 distributions, and retained title to the remainder which serves as “security” for Defendants’ claims pursuant to the applicable court order.
- 34. Denied as a conclusion of law.
- 35. Denied as a conclusion of law. Further denied that Defendants are entitled to any relief.

**SECOND COUNT**

**Declaratory Judgment – BAIT Rebate**

- 36. This is an incorporation paragraph to which no response is required.
- 37. Denied as a conclusion of law.
- 38. Denied as a conclusion of law.
- 39. Denied to the extent that these allegations attempt to characterize the arbitrator’s ruling, a written document that speaks for itself.
- 40. Denied to the extent that these allegations attempt to characterize the arbitrator’s ruling, a written document that speaks for itself.
- 41. Denied to the extent that these allegations attempt to characterize the arbitrator’s ruling, a written document that speaks for itself.

- 42. Denied as a conclusion of law.
- 43. Denied as a conclusion of law.
- 44. Denied as a conclusion of law. Further denied that the Defendants are entitled to any relief.

### **THIRD COUNT**

#### **Aiding and Abetting Breach of Fiduciary Duty – Third Party Defendant**

- 45. This is an incorporation paragraph to which no response is required.
- 46. This paragraph is directed to Vincent McNerny, M.D. (the “**Third Party Defendant**”), not the Plaintiffs, and thus no response is required.
- 47. This paragraph is directed to the Third Party Defendant, not the Plaintiffs, and thus no response is required.
- 48. This paragraph is directed to the Third Party Defendant, not the Plaintiffs, and thus no response is required.
- 49. This paragraph is directed to the Third Party Defendant, not the Plaintiffs, and thus no response is required.
- 50. This paragraph is directed to the Third Party Defendant, not the Plaintiffs, and thus no response is required.
- 51. This paragraph is directed to the Third Party Defendant, not the Plaintiffs, and thus no response is required.
- 52. This paragraph is directed to the Third Party Defendant, not the Plaintiffs, and thus no response is required.

WHEREFORE, the Plaintiffs request that each and every Claim for Relief set forth in the Answer be dismissed with prejudice; that costs be awarded to the Plaintiffs and against the

Defendants in this adversary proceeding; and for such other and further relief as the Court deems just and appropriate.

**AFFIRMATIVE DEFENSES**

**FIRST AFFIRMATIVE DEFENSE**

The Answer fails to state a claim upon which relief can be granted.

**SECOND AFFIRMATIVE DEFENSE**

The Defendants' claims are barred, in whole or in part, by the doctrine of waiver.

**THIRD AFFIRMATIVE DEFENSE**

The Defendants' claims are barred, in whole or in part, by the doctrine of unclean hands.

**FOURTH AFFIRMATIVE DEFENSE**

The Defendants' claims are barred, in whole or in part, by the doctrine of *in pari delicto*.

**FIFTH AFFIRMATIVE DEFENSE**

The Defendants' claims are barred, in whole or in part, by the Defendants' inequitable conduct.

**SIXTH AFFIRMATIVE DEFENSE**

The Defendants' claims are barred, in whole or in part, by the Defendants' express, implied, or equitable release of the rights now asserted.

**SEVENTH AFFIRMATIVE DEFENSE**

The Defendants' claims are barred, in whole or in part, by the doctrine of equitable estoppel.

**RESERVATION OF RIGHTS**

The Plaintiffs expressly reserve the right to assert additional affirmative defenses to the Answer that may arise in the course of discovery.

WHEREFORE, the Plaintiffs request that each and every Claim for Relief set forth in the Answer be dismissed with prejudice; that costs be awarded to the Plaintiffs and against the Defendants in this adversary proceeding; and for such other and further relief as the Court deems just and appropriate.

Dated: April 3, 2025

**SAUL EWING LLP**

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